



REGULATIONS

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REGULATIONS

On April 12, 1991, the Office of Administrative Law (OAL) approved the Panel's first official regulatory file. The process for the development of new regulations remains an on-going priority of the Panel. The Regulations have been previously amended on March 9, 1993; April 14, 1995; December 1, 1995; July 23, 1996; November 26, 1997; December 4, 1997; January 1, 1998; May 18, 1998; November 9, 1998; May 7, 1999; December 8, 1999; December 20, 1999; April 17, 2000; January 8, 2001; and November 6, 2001. The ETP regulations implement and make specific statutory requirements and provide the public with a definite set of criteria and guidelines that must be complied with by the contractors and the Panel.

Regulations 4408, 4409, and 4414 were approved the Office of Administrative Law as Emergency Regulations effective November 6, 2001.

An Index is provided for quick reference to specific topics or phrases

Note: The correct reference for citing Panel Regulations is: Title 22 California Code of Regulations, Sections 4400-4450.

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CHAPTER 3.5 EMPLOYMENT TRAINING PANEL

Article 1. General Provisions

4400. Definitions.

As used in Sections 4400-4450, inclusive, of these regulations:

- (a) "Apprentice" means an individual at least 16 years of age who is in training under apprenticeship standards and a written apprenticeship agreement pursuant to Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code.
- (b) "Costs of program administration" means those costs incurred by the panel in carrying out its responsibilities under Chapter 3.5 of the Code, including costs of marketing, outreach, and research provided under contract to the panel, and which are not included in contracts to provide employment training.
- (c) "Days" means calendar days unless otherwise specified as "working" days.
- (d) "Demonstrable shortage" means an insufficient number of workers trained to perform the particular skills required by participating employers as a necessary part of doing business.
- (e) "Director" means the Executive Director of the Employment Training Panel.
- (f) "Disabled individual" means any person who meets one of the following criteria:
 - (1) has a physical or mental impairment that substantially limits one or more of such person's major life activities;
 - (2) has a record of such impairment; or,
 - (3) is regarded as having such an impairment, and is likely to experience difficulty in securing, retaining, or advancing in employment because of such an impairment, and who can perform a particular job with reasonable accommodation to his or her disability. Eligible contractors shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled individual unless the applicant can demonstrate that the accommodation would impose an undue hardship on the operation of its program.
- (g) "Displaced worker" means a person who has been subjected to an involuntary layoff or separation from his or her employment, or has been separated from employment due to the established seniority practice of a collective bargaining agent, and who has not quit voluntarily or been dismissed for disciplinary reasons, or has received a written notice of layoff from their current employer.
- (h) "Employment" means any full-time work, occupation, or trade, in which one is or may be engaged for wages, salary, or other forms of remuneration that are customary for the occupation and the industry. Full-time employment means employment of at least 35 hours a week, for a period of 90 consecutive days, which period includes normal days not worked by the employee, such as a weekend and holidays, with a single employer, except for those occupations in which it is not customary for a worker to be employed 90 consecutive days with a single employer. In these latter cases, the panel may substitute a period similar to the probationary period customary to the occupation. The probationary period shall not be less than 500 work hours and shall be completed within a period of 150 days following the

completion of training. The panel shall, upon the showing of good cause by the Contractor, extend the probationary period up to 272 days following the completion of training. Upon application and proof from the contractor, the panel may find that a less than 35-hour work week constitutes full-time employment if any or all of the following conditions exist:

- (1) The less than 35-hour work week constitutes an entry level norm for a particular occupation and/or its classification in the locale where the employment is offered, and there is a reasonable probability that the employee's hours will be at or more than the 35 hours standard within 12 months of the commencement of employment.
- (2) The less than 35-hour work week has been voluntarily requested by the employee for purposes of dependent care, or for other critical situations peculiar to that employee.
- (3) The less than 35-hour work week is necessitated by special circumstances confronting the employer and there is a reasonable probability that the employee's hours will be at or more than the 35 hours standard within 12 months of the commencement of employment.
- (4) For purposes of subsections (1), (2), and (3) the employee shall be offered and receive a benefit and compensation package commensurate on a probata basis with that offered to other employees. In no event shall an employee's hours be used as reason for denying any such benefits or other compensation to that employee.
- (5) Upon proof by the contractor and a finding of good cause by the panel, the panel may find that less than 35 hours a week constitutes full time employment if the hours per week are customary for the industry, occupation and class of employment and the locale where the employment occurs, and/or the hours are considered full-time employment for purposes of a collective bargaining agreement. In no event shall the hours permitted herein and in subsections (1), (2), and (3) be less than 25 hours. The days worked may be less than five, but shall be more than two.
- (6) If the hours as set forth in subsection (1) and (2) are not extended to 35 hours a work week within 12 months of the commencement of employment, then 100 percent of the amount attributable to the cost of training the less than 35 hour employee shall be returned, if paid, to the Employment Training Panel, except as provided in subsection (9) below.
- (7) For purposes of implementation of this provision, subsection (1), (2), or (5) can be invoked only as part of training contracts. Subsection (3) can be invoked at any time from the enrollment of a trainee in training to the beginning of the effected trainee's period of employment following training.

- (8) The panel may, when granting an exemption to the 35-hour work week standard, withhold up to 100 percent of the amount attributable to the cost of training a less than 35 hours employee until the standard full-time employment has been achieved, but the monies shall not be deemed earned if full-time employment is not achieved within 12 months of the commencement of employment by the trainee.
- (9) The panel may, upon a showing of good cause by the contractor, deem earned whatever amount it finds to be reasonable for the less than 35 hour employee if full-time employment has not been achieved within a 12 month period following the commencement of employment.
- (10) Where training received is for employment in the entertainment industry, an individual shall be deemed "retained in employment":
 - (A) Upon completion of training, the individual completes 500 hours of work in a six-month period at a wage to be specified according to the trainee's particular vocation.
 - (B) An extra six-month employment period in which to complete 500 work hours shall be granted, after a review of each individual's case by the Panel, if it can be shown that one or more of the following triggers provide good cause for a six month extension: the cancellation of a television show or film; strikes or a threat of a strike; lockouts; the illness, pregnancy or injury of the trainee; shooting delays caused by location problems, permit problems, financing problems, equipment failure, illness or pregnancy of key cast or crew members, or disputes among parties involved in the production.
 - (c) A trainee's employment is not to be limited to employment with a single industry employer; a trainee should be allowed to have multiple employers while compiling 500 work hours.
 - (D) A trainee may be employed only by an employer or employers specifically listed in the agreement while completing the 500 work hour requirement.
 - (E) An employee may not be allowed to include, as part of the total hours worked, work performed as an independent contractor, unless the trainee maintains self-elected, unemployment insurance coverage.
- (i) "Facility" means one contiguous work site at the same geographic location.
- (j) "Group of employers" means:
 - (1) two or more employers which combine efforts to form a consortium in order to meet the common training needs by specific occupational categories or address common training needs based on industrial trends, and/or
 - (2) two or more employers which combine efforts whereby the primary employer assumes liability for the Panel contract, with secondary agreements between the primary employer and the supplier employers (or both the primary employer and the secondary suppliers contract with the Panel), and trains the employees of one or more of its suppliers due to the special and unique needs of the primary employer, and/or

- (3) a professional association, trade association, or joint apprenticeship training committee and/or
 - (4) any economic development corporation which has been in existence for more than one year and whose Board of Directors is composed of a majority of California employers eligible to participate in a Panel funded agreement. The Board of Directors must approve the Panel agreement.
- (l) "In-kind contributions" means those costs incurred by a contractor or an employer participating in a multiple employer contract that are directly attributable to an ETP training project and demonstrate the contractor's or employer's monetary commitment to the training program. These contributions are in addition to, or in excess of, training and administrative costs reimbursed by ETP.
- (m) "Labor market information" means economic, occupational, geographic and demographic characteristics of the labor market that encompasses population and labor force composition, industry and occupational trends and outlook, job opportunities, hiring and training practices, skill requirements and trends, wages, labor force estimates, career ladders, and occupational supply and demand.
- (n) "Literacy training" means basic, job-related skills including math, reading, and language skills necessary for the trainee's job performance and employment retention in a job with definite career potential and long-term job security.
- (o) "Minority" refers to a person whose ethnic origin is:
 - (1) Black: those individuals with black racial groups of Africa;
 - (2) Asian American: those individuals of Chinese, Japanese, Korean, Okinawan, Thai, and Vietnamese, Southeast or Southwest Asian descent;
 - (3) Hispanic American: those individuals of Mexican, Puerto Rican, Cuban, Central or South American descent;
 - (4) Polynesian: those individuals of Hawaiian, Samoan, Tongan, Tahitian, Gilbertine, Fijian, and Guamanian descent;
 - (5) American Indian or Alaskan Native: those individuals having origins in any of the original peoples of North America; and,
 - (6) Filipino: those individuals having origins in the peoples of the Philippine Islands.
- (p) "Minority-owned business" means a business concern that is all of the following:
 - (1) At least 51 percent owned and operated by one or more minorities, or, if a publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities; and,
 - (2) Managed by, and the daily business operations controlled by, one or more minorities; and,
 - (3) A sole proprietorship, partnership, or domestic corporation with its home office located in the United States that is not a branch or subsidiary of a foreign corporation, firm, or other business.

- (q) "Panel" means the organization inclusive of the appointed members and civil service staff of the Employment Training Panel.
- (r) "Payment earned" means that a trainee has successfully completed training and has been retained in employment for 90 days or the equivalent probationary period for an occupation in which it is not customary for a worker to be employed 90 consecutive days with a single employer but no less than 500 hours within a maximum of 272 days at the specified wage.
- (s) "Progress payment" means those partial payments that must be returned to the panel unless subsequently earned.
- (t) "Proprietary information" means information provided by an employer to the panel relative to a company's favorable or unfavorable business conditions or financial circumstances, which, if disclosed, the employer believes would provide an advantage to competitors or a disadvantage to the business or its employees.
- (v) Retained in employment"
 - (1) Means the trainee has been retained in a job:
 - (a) With definite career potential and a substantial likelihood of long-term job security,
 - (b) Directly related to the training provided, and,
 - (c) With a single employer for at least 90 days after the end of training unless it is not customary for a worker to be employed 90 consecutive days with a single employer; then a requirement of 500 hours of employment during a period not to exceed 272 calendar days after completion of training shall be substituted.
 - (2) For new hire trainees who have been placed in qualifying employment after completion of training by a training agency and who do not complete 90-days of employment retention with the initial employer, the training agency may place the trainee in subsequent qualifying employment with an eligible employer for an additional 90 days within the term of the contract.
 - (3) If a trainee voluntarily terminates his/her employment after the completion of training, but before the end of the applicable retention period, the contractor will be reimbursed for that trainee if that trainee is employed by another eligible employer for the applicable retention period for at least the same earnings as set forth in the Agreement. However, the Panel will reimburse for a trainee who is employed by another eligible employer for earnings which are less than required by the Agreement as long as the trainee's earnings are equal to the earnings required by Unemployment Insurance Code Section 10201(g) or, if applicable, Section 10214.5(a)(1), and the trainee is using the skills for which he/she was trained. The retention with any subsequent employer must be within the term of the Agreement.

If after the completion of training and before the end of the applicable retention period, the trainee has a break in employment necessitated by the Family Medical Leave Act (Government Code Section 12945.2) or an Act of God, the trainee shall be deemed to have completed the retention period
- (w) "Small business" means:

A business concern in which the principal place of business is located in California and the owners (or

officers in the case of a corporation) of such business are domiciled in California, which is independently owned and operated and has no more than 250 full-time employees. Special consideration may be given to a small business with 100 or fewer full-time employees.

A "franchise" may be considered a small business if it meets the requirements stipulated above and consists of an arrangement in which the owner of a trademark, trade name, or copyright licenses others, under specified conditions or limitations, to use the trademark, trade name, or copyright and the business relationship between the two parties is an arm's-length relationship between two independent contractors with their respective rights determined by a contract.

For the purposes of this section, a company may not be considered a small business if it is a subsidiary corporation. "Subsidiary corporation" means a corporation that is subject to a parent corporation that has the power either directly or indirectly or through another corporation or series of other corporations to elect a majority of its directors.

- (y) "Training" consists of the delivery of instructional experiences to develop and/or improve workforce skills and knowledge for jobs with definite career potential and the substantial likelihood of long-term job security. Training shall consist of at least 40 hours and be delivered as classroom, laboratory, technology-based distance training, or structured-on-site-training (SOST). Each of these training methods is equally valuable in the delivery of training. The Panel may authorize training that varies from the minimum training hours requirement upon a showing of good cause by the proposed contractor.
- (1) Classroom training is formal instruction provided to a group of individuals, in a classroom setting removed from the trainee's usual work environment, meeting regularly for training in a specific skill under the constant and direct guidance of a qualified trainer.
 - (2) Laboratory training is "hands-on" instruction or skill acquisition conducted in a non-productive environment, or simulated work setting, under the direct training of a laboratory trainer that may require the use of specialized equipment or facilities by the trainee. The trainer's time during laboratory training must be dedicated exclusively to the instruction of trainees.
 - (3) One-hundred percent of reimbursement for videoconference and classroom/ laboratory training for all trainees shall be earned only if 100% of the required training hours are documented as delivered to at least one trainee. However, if Contractor's records do not substantiate that 100% of the required training hours were delivered, then Contractor will be reimbursed according to the highest percentage of training that has been substantiated as delivered to at least one trainee.

Each trainee should complete 100% of the required videoconference and classroom/laboratory training hours. The Panel will not reimburse Contractor for a trainee who does not complete a minimum of 80% of the required videoconference and classroom/laboratory training.
 - (4) Technology-based distance training is instruction provided through videoconference and/or computer-based training. This training should be provided in conjunction with classroom/laboratory instruction.
 - (5) Videoconference training must comply with the following trainer to trainee ratios: (1) for retrainees, 1 to 20; (2) for new hires, 1 to 15. Each videoconference training session shall be limited to no more than three sites.

- (6) Reimbursement for each completed CBT course shall be for the standard number of hours to complete that course, as designated by the vendor which developed the course. Reimbursement for CBT shall not be earned unless the following criteria are met:
 - (A) The employer must assess that the type of training, specific course(s), and delivery method are appropriate for the occupation(s) being trained through CBT;
 - (B) The trainee must complete at least eighty percent (80%) of the specified CBT course; and
 - (C) At the completion of CBT, the employer must certify that the trainee has achieved competency in the skills covered by the training.
- (7) SOST is supervised training conducted at an employer work site during normal working hours which allows the trainee to transfer and test knowledge/skills learned in the classroom/laboratory training to the work site.
- (8) Reimbursement for SOST training shall not be considered earned unless one hundred percent (100%) of the trainer's time is accounted for as specified in the contract and includes specific activities:
 - (A) At a minimum, the trainer's assistance must be customized to the needs of the individual trainees and, at the completion of SOST, the trainer must assess each trainee's attainment of competencies.
 - (B) In addition, the trainer may engage in and also account for the time spent in making specific SOST assignments to the trainee and the time interacting with, coaching and continually evaluating and providing feedback to the trainee on his/her performance on SOST assignments.

Authority: Section 10205(l), Unemployment Insurance Code

Reference: Sections 10200, 10201(b)(2)(A), (B), (3), (c), (f), (g), (i), (j), 10202, 10203, 10204(b), 10205, 10206(a)(1)(C), (a)(2), (3), 10207(a), 10209(a), (b), (d), (e), (f), (g), 10210(a), 10211, 10212(a), (b), (c), (d), 10212.1, 10212.2(a), (b), 10213, 10213.5(b), 10214.5(a), Unemployment Insurance Code.

- (z) "Training agency" means any public or private training entity, state or local school, or education agency that has been in existence for a minimum of two years preceding the application for panel funding, and has an established history of providing training and placement services to the public.
- (aa) "Veteran" means an individual who served on active duty for more than 180 days, and was discharged or released with other than a dishonorable discharge or was released from active duty because of a service-connected disability. Active duty refers to the full-time duty in the Armed Forces. Any period of duty for training in the reserves or National Guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in the line of duty, is considered "active" duty.
- (bb) "Woman-owned business" means a business concern that is all of the following:

- (1) At least 51 percent owned and operated by one or more women or, in the case of publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and,
 - (2) Managed by, and the daily business operations controlled by, one or more women, and,
 - (3) A sole proprietorship, partnership, or domestic corporation with its home office located in the United States that is not a branch or subsidiary of a foreign corporation, firm, or other business.
- (cc) "Written notification" means a document prepared by the employer/contractor where a potential retrainee is currently employed, and received by the employee/retrainee either in person or by mail, stating that the employee will be laid off. This document may also be referred to as a Notice of Layoff. A Notice of Layoff shall be issued in lieu of a certification for the need for retraining as specified in Section 4441.
- (1) This notice shall contain, but is not limited to, the following information:
 - (A) Name and address of the employer;
 - (B) Employee name and social security number;
 - (C) Employee job title;
 - (D) Date notice was mailed or presented to the employee or the date of separation consistent with a collective bargaining agreement;
 - (E) Date of impending layoff; and,
 - (F) Employer signature.
 - (2) The notice must have been issued by the employer and presented to the affected employee/retrainee by the time an application for funding is submitted to Employment Training Panel staff.
 - (3) The notice shall indicate that the date of layoff is within two years of the date the application for funding is presented to the Panel.
 - (4) The reason for issuance of the termination notification/notice of layoff shall be directly related to the employer's inability to provide continued employment.

Authority: Section 10205(l), Unemployment Insurance Code

Reference: Section 10200(a), (b), (d), (f), (h)(2), (3), (4), (6), (7), 10201(b)(2)(A), (B), (3), (c), (f), (g), (l), (j), 10202, 10203, 10204(b), 10205, 10206(a)(2), (3), 10207(a), 10209(a), (b), (d), (e), (f), (g), 10210 (a), 10211, 10212(a), (b), (c), (d), 10212.1, 10212.2(a), (b), 10213, 10213.5(b), 10214.5(a), Unemployment Insurance Code

Effective: April 12, 1991

Amended: December 1, 1995; July 19, 1996; May 18, 1998; December 20, 1999; April 17, 2000; April 25, 2000; September 25, 2000.

4400. Definitions.

As used in Sections 4400-4450, inclusive, of these regulations:

- (dd) "Enrollment" means the process of registering an employee with the Panel as an eligible participant in a Panel funded training program. Concurrent enrollment of any trainee in more than one Panel funded training program is prohibited.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Sections 10200, 10201(b)(2)(A), (B), (3), (c), (f), (g), (i), (j), 10202, 10203, 10204(b), 10205, 10206(a)(1)(C), (a)(2), (3), 10207(a), 10209(a), (b), (d), (e), (f), (g), 10210(a), 10211, 10212(a), (b), (c), (d), 10212.1, 10212.2(a), (b), 10213, 10213.5(b), 10214.5(a), Unemployment Insurance Code.

Effective: July 7, 1998

- (ee) "Frontline worker" means an individual who meets one of the following criteria:

- (1) Is not exempt from overtime under state or federal law, providing he or she directly produces or delivers goods or services.
- (2) Is covered by a collective bargaining agreement, providing he or she directly produces or delivers goods or services.
- (3) Is exempt from overtime under state or federal law and not covered by a collective bargaining agreement if his or her primary job responsibility is directly producing or delivering goods or services.
- (4) For purposes of Special Employment Training projects, a frontline worker may also be the owner (a) of a business with at least 1, but less than 10 full-time employees, and (b) whose primary duties consists of directly producing or delivering goods or services.

Authority: Section 10205(m), Unemployment Insurance Code.

Reference: Sections 10200, 10201(c), (f), (g), (h), (i), (l), 10202, 10202.5, 10203, 10204(b), 10205, 10206(a)(1)(C), (a)(2), (3), 10207(a), 10209(a), (b), (d), (e), (f), (g), 10210(a), 10211, 10212.2(a), (b), 10213, 10213.5(b), 10214.5(a), Unemployment Insurance Code.

Effective: December 8, 1999

Amended: January 8, 2001

- (ff) "Computer-based training" (CBT) is instruction which occurs when a trainee uses a computer to access and learn training material through computer-associated media, such as the Internet, intranet, local area network, and CD-ROM.

Authority: Section 10205(l), Unemployment Insurance Code

Reference: Sections 10200, 10201(b)(2)(A), (B), (3), (c), (f), (g), (i), (j), 10202, 10203, 10204(b), 10205, 10206(a)(1)(C), (a)(2), (3), 10207(a), 10209(a), (b), (d), (e), (f), (g), 10210(a), 10211, 10212(a), (b), (c), (d), 10212.1, 10212.2(a), (b), 10213, 10213.5(b), 10214.5(a), Unemployment Insurance Code.

Effective: December 20, 1999

- (gg) "Videconference training" is live, interactive instruction provided by a trainer through a video communications session between 2 or more locations.

Authority: Section 10205(l), Unemployment Insurance Code

Reference: Sections 10200, 10201(b)(2)(A), (B), (3), (c), (f), (g), (i), (j), 10202, 10203, 10204(b),

10205, 10206(a)(1)(C), (a)(2), (3), 10207(a), 10209(a), (b), (d), (e), (f), (g), 10210(a), 10211, 10212(a), (b), (c), (d), 10212.1, 10212.2(a), (b), 10213, 10213.5(b), 10214.5(a), Unemployment Insurance Code.

Effective: December 20, 1999

4400. Definitions.

- (hh) "Working poor" means workers who have full-time jobs and stable employment, but earn low wages in jobs appearing to lack career potential. These "working poor" also lack the essential job skills necessary to improve their employment opportunities to move ahead in the economy. Their lack of job skills is often accompanied by limited education and/or English-speaking skills.
- (ii) "High Unemployment Areas" means:
 - (a) Counties with unemployment rates which are at least 50 percent higher than the state average, based on the most recent Employment Development Department (EDD) unemployment statistics from its Labor Market Information Division (LMID); or
 - (b) Areas within Los Angeles County with unemployment rates which exceed the state average, based on the most recent EDD unemployment statistics from LMID and census data information.

Authority: Section 10205(m), Unemployment Insurance Code.

Reference: Sections 10200, 10201(c), (f), (g), (h), (i), (l), 10201.5, 10202, 10202.5, 10203, 10204(b), 10205, 10206(a)(1)(C), (a)(2), (3), 10207(a), 10209(a), (b), (d), (e), (f), (g), 10210(a), 10211, 10212.2(a), (b), 10213, 10213.5(b), 10214.5(a), Unemployment Insurance Code.

Effective June 20, 2001.

Article 2. Proposal Process

4401. Evaluation Process.

- (a) The panel evaluates proposals initiated by business, industry and/or labor entities by first determining if the entity meets the criteria for an employer. To be eligible for panel funding a person or entity must be either of the following:
 - (l) an employer or group of employers,
 - (2) a training agency,
 - (3) a private industry council with the approval of the appropriate local elected officials in the service delivery area, or
 - (4) a grant recipient or administrative entity selected pursuant to Section 103 of the Federal Job Training Partnership Act and Section 15021, with the approval of the local private industry council and the appropriate local elected officials.
- (b) The panel shall expedite the processing of contracts for firms considering locating or expanding in the state, as determined by the Department of Commerce. It shall also expedite referrals from other state agencies provided that they meet one of the priorities in the allocation of training funds outlined in the statute; and/or that panel fixed-fee pricing systems for categories of training that are substantially similar with respect to content, methodology, and duration are used.
- (c) Training proposals for a new business locating in California or for a significant expansion of an existing business, shall be required to submit business plans and other financial information sufficient to ensure that the employer for whom funding is provided is financially stable and capable of providing jobs with definite career potential and long-term job security.

Authority: Section 10205(k), Unemployment Insurance Code

Reference: Section 10204, 10205(c), (d), (e), (f), (g), (l) and 10206, 10207, 10209, 10210, 10214.5,
Unemployment Insurance Code Effective: April 12, 1991

4401.5 Employer Eligibility.

- (a) An Employer is eligible for Panel funding and/or for purposes of placement of trainees under training agency or consortia projects if the Employer has a California Employer Account Number ("CEAN") beginning with the prefix 699 or lower. This threshold eligibility does not preclude any other eligibility requirements of the law or regulation.
- (b) An Employer with a CEAN with a prefix of 700 to 899 is not eligible as set forth in paragraph (a) of this section under these account numbers.
- (c) An Employer with a CEAN number with a prefix of 900-999 is not eligible for Panel funding, but may be utilized by a training agency or consortium for incidental placements of new hire trainees under a training project designed to meet the needs of multiple private sector employers. It is the contractor's responsibility to assure that the employer is eligible for placement purposes as provided herein. Such incidental placements shall not be planned at the beginning of the project, nor may these placements exceed 20% of the total placements and retentions in the Panel project.
- (d) Federal agencies are not eligible for any purpose for participation in a Panel program, unless otherwise specifically permitted by law, nor are federal agencies eligible employers for purposes of incidental placements of new hire trainees as provided herein.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Section 10201(a), (f), (g) and (l), Unemployment Insurance Code.

Effective: May 18, 1998

4402. Application Process.

- (a) Any eligible entity specified in subdivision (c) of Section 10205 requesting funds from the panel for training purposes shall complete an application for funding. The application can be obtained from the panel's headquarters in Sacramento.
- (b) The Application for Funding (ETP 001, Revision 1/91) shall include:
 - (1) The contractor's name, address, phone number, California employer account number, and contact person,
 - (2) A statement of the need and purpose of the training,
 - (3) Identification of any priorities and/or special considerations being proposed for funding consideration,
 - (4) A description of the career potential and the substantial likelihood of long-term job security offered by the employer following training,
 - (5) An estimate of the training and administrative expenses,
 - (6) Identification of any labor organization that represents employees to be trained,
 - (7) If the training is being proposed by a training agency, Private Industry Council, or consortium, the names and addresses of employers who have been contacted and have provided the proposed contractor with an assurance that they will employ the successful trainees must be specified,
 - (8) Identification of the type of training being proposed and number of trainees to be served,
 - (9) A description of the contractor's primary business activity,
 - (10) An explanation of the need for funding,
 - (11) Identification of third party administrative service providers,
 - (12) For training agencies, Private Industry Councils, and grant recipients, a description of the labor market demand for the proposed training, a description of accounting systems to be used to control any progress payments released during the course of the program, and the identification of any off-setting funds generated through state apportionment or apprenticeship education, and
 - (13) The proposed start date of the training.
- (c) Time frames: within three working days of receipt of a letter requesting funding consideration, the application, along with instructions and time frames, shall be mailed to the interested party for completion. The applicant shall be notified in writing of the status of the application within

60 days after filing.

Authority: Section 10205(k), 10205(l), Unemployment Insurance Code

Reference: Section 10205(c), (d), (e), (l), 10206(a)(1), (c), (d), (e), (f), 10207(a), Unemployment Insurance Code Effective: April 12, 1991

4402.1 Contractor Meetings.

- (a) The Panel may require potential contractors as a condition to any further processing of a request for an application, a submitted Panel application and/or a preliminary Panel proposal to attend orientation or other meetings conducted by the Panel for the purpose of familiarizing potential contractors with Panel policies, procedures, regulations, the Panel's enabling legislation and/or other conditions necessary to the successful performance of a Panel contract.
- (b) As a further condition, the Panel may, at its discretion, require the attendance of specific contractor employees identified by the Panel at these mandatory meetings. Any individual agent or agents created by the contractor for the purpose of the Panel contract will not be satisfactory in compliance with the attendance requirements unless so agreed to by the Panel in writing.
- (c) Failure of the contractor to attend an orientation meeting and/or other meeting as specified herein will result in the termination of any Panel work on the contractor's request for application, application or preliminary proposal until such time as the contractor reapplies to the Panel for funding or is granted relief from the failure to attend on conditions approved by the Panel.

Authority: Section 10205(l), Unemployment Insurance Code.
Reference: Section 10200, Unemployment Insurance Code.

Effective: December 4, 1997

4402.2 Critical Proposal.

(a) The Panel recognizes that certain application(s)/proposal(s) for Panel funding are uniquely critical to the California economy and therefore the development of such application(s)/proposals must be expedited.

(1) The Executive Director determines if an application/proposal is to be given immediate attention. Such a project will be designated in-house as a "Critical Proposal" and the development of that project will be given priority over other non-critical designated projects, at whatever stage in development those non-critical projects may be.

(2) The "Critical Proposal" designation will be in writing, identify the project, and indicate the basic reason(s) for its special status. These reasons may include, but are not limited to training of new employees of firms locating or expanding in the state that provide high-skilled, high-wage jobs and are committed to an ongoing investment in the training of frontline workers, and training of existing employees subject to displacement because of plant closure, reduction in workforce, changes in technology, or significantly increasing levels of international and out-of-state competition.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Section 10205(j), Unemployment Insurance Code.

Effective: May 18, 1998

4403. Coordination with Other Agencies.

The Panel shall coordinate its programs with the local and state entities of the federal Job Training Partnership Act, the State Job Training Coordination Council, the office of the Chancellor of the California Community Colleges, the State Department of Education, the Employment Development Department, the Department of Commerce, and joint labor-management training programs. One assistant director appointed by the Governor shall have the responsibility of coordinating the Panel's efforts with other local, state, and federal training programs and educational agencies.

The responsibilities shall include, but are not limited to:

- (a) acting as the liaison between ETP and local, state, or federal training agency;
- (b) assisting in the selection of occupational categories and occupational trends topics during the annual planning of the state-local labor market information program jointly administered by the Employment Development Department and selected participating Private Industry Councils; and,
- (c) responding to the referrals made by cooperating state agencies. The panel shall notify the relevant Private Industry Council(s) organized under the Federal Job Training Partnership Act and responsible Area Administrators of the Employment Development Department when an application is received and accepted that proposes to train persons who are unemployed at the start of training.

Authority: Section 10205(k), Unemployment Insurance Code

Reference: Sections 10200(f), (g), (h)(5), 10204(a), and 10205(c)(3), (4), (j), 10207(b), 10212(d)(2), 10213, 10213.5, 10214 Unemployment Insurance Code. Effective: April 12, 1991

4404. Collective Bargaining Agreements.

- (a) Prior to presenting an application for a proposed training project to the panel, the contractor shall notify the appropriate collective bargaining agent which represents workers for whom training is proposed of its intent to apply for Panel funding. The notice of intent shall contain the information regarding the proposed training, the impacted employee population, the name of the collective bargaining agent, and the effective date of the application.
- (b) Upon receipt of the notice of intent pursuant to subdivision (a), the labor organization representing effected workers shall notify the panel, in writing, of its concurrence with the contractor's proposal. The written notification shall be signed by an authorized representative of the collective bargaining agent and received by the panel prior to further development of the agreement. The labor organization shall have the opportunity to participate in the agreement's development.

Authority: Section 10205(k), Unemployment Insurance Code.

Reference: Section 10205(e), Unemployment Insurance Code.

Effective: April 12, 1991

4405. Funding Limitations.

- (a) In order to make Panel funds available to the greatest number of trainees, the Panel may establish funding restrictions on contracts and/or establish certain funding priorities. Any funding restrictions or application of priorities shall reflect statutory criteria and may include, but are not limited to, the following:
 - (1) Setting dollar caps on contracts and limiting the term of training projects.
 - (2) Requiring contractors to contribute a specified dollar amount to each contract in addition to in kind contributions and substantial contributions provided for both in the law and these regulations.
 - (3) Assigning priority to contracts proposing training for new hire and recently hired trainees.
 - (4) Assigning priority to small business and/or industries.

Authority: 10205(l), Unemployment Insurance Code

Reference: 10205(c), (d), (j), (k), 10206(b), 10207(b), 10213, 10213.5, Unemployment Insurance Code

Effective: April 12, 1991

Amended: July 19, 1996

4406. New Hire Training Programs.

- (a) The Panel shall charge contractors for any services performed by the Panel for the contractor relative to promotional activities to recruit new hire trainees.
- (b) All associated promotional costs will be tracked by the Panel and subsequently debited to the contractor's reimbursement under the Panel contract, at a price agreed to by the contractor and the Panel prior to provision of the promotional service by the Panel.
- (c) The Panel shall review and approve any promotional material prepared by or for the contractor for the Panel-funded training program prior to its use by or for the contractor.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Sections 10200(a), (b), (d), (e), (h)(4), and 10206(a)(1), Unemployment Insurance Code.

Effective: April 12, 1991 Amended: March 9, 1993; December 4, 1997

4407. Small Business Projects.

- (a) To further enhance its coordination efforts the Panel may, for the purposes of serving the needs of small businesses, delegate its authority to approve new hire training projects in an amount not to exceed \$50,000 to Private Industry Councils. Prior to delegating this authority the Panel shall determine that the entity to which it is delegating authority meets the following criteria:
- (1) has a satisfactory record of past performance in the placement and retention of former trainees and employer satisfaction with the former trainees;
 - (2) can demonstrate labor market demand for the proposed new hire training;
 - (3) can demonstrate that the training prepares trainees in a manner satisfactory to employers;
 - (4) can demonstrate that the cost per trainee complies with previously approved training costs funded by the Panel for similar occupations or in like industry; and,
 - (5) can demonstrate that it has adequate controls to verify the accuracy and reliability of accounting data, promote operating efficiency, and assure compliance with government requirements and generally accepted accounting principles.

Authority: 10205(l), Unemployment Insurance Code.

Reference: 10200, 10204(b), 10210, 10212(d), 10213.5(b) Unemployment Insurance Code.

Effective: April 12, 1996

Amended: July 19, 1996

Revisions: January 8, 2001 (amended as emergency regulation); May 8, 2001 (emergency regulation repealed- text reverts to prior language)

4408. California Career Ladders to the 21st Century Training.

- (a) To address the training needs in industries and occupations with demonstrated career advancement opportunities, the Panel may fund projects developed jointly with the Employment Development Department, under California Career Ladders to the 21st Century, to provide workers in low-wage jobs the skills necessary to advance to higher paying jobs in industries with the potential for career advancement opportunities. The industries in which trainees are employed must have previously demonstrated career paths with a clear career advancement structure, and the participating employer(s) must show a long-term commitment to training.
- (b) For purposes of Panel funding, projects developed under this category are subject to the provisions of the Panel's enabling legislation regarding job creation. These projects may be funded under the Panel's regular funding category, pursuant to the Panel's standard statutory and regulatory criteria, subject to the exceptions outlined below. Furthermore, each project shall be funded for no more than \$500,000.
 - (1) The Panel may waive the eligibility provision of §10201(c) of the Unemployment Insurance Code.
 - (2) The Panel may waive the ETP minimum wage requirements, as provided in UI Code Section 10201(f), for frontline workers in projects under this group.
 - (3) The Panel may exempt projects in this group from the limitations imposed on Panel funded literacy training under §4420, up to 100 percent of the total vocational skills training hours per trainee.
 - (4) The 90 day post-training employment retention period for trainees in this group may be completed with up to two participating eligible employers within 120 days, within the same discrete industry, if there is evidence of job security at the end of the retention period. The Panel may, upon a showing of good cause by the contractor, allow for the employment retention period to be completed with three employers, within the same discrete industry.
- (c) Projects being proposed under this category shall include information in the following areas:
 - (1) the occupational category in which a career pattern of advancement exists that is recognized in the trade or industry;
 - (2) the progressive development of job skills associated with a defined set of work processes or tasks which are delivered sequentially in the course of training and employment;
 - (3) the progression of earnings and related benefits; and,
 - (4) identification of the trainees who will receive training in order for the panel to make a determination as to the qualifications of the individuals to be trained or retrained in the skills necessary for career advancement in the relevant industry. This determination shall include a review of the individual trainee's tenure in the position.

- (d) Contractor shall demonstrate that each trainee will advance to a new job with higher earnings, in accordance with the progression of earnings provided by Contractor at the beginning of the Agreement, and increased responsibilities within one year after the completion of each trainee's training. Time-in-grade increases that provide for regular salary increases for satisfactory performance within a job classification without increases in skills do not meet the criteria relative to the progression of earnings. Time-in-grade increases cannot be substituted for a progression of earnings as salary advancement occurs without the formal and concurrent development of skills and abilities. Similarly, cost of living allowances, shift differentials, and salary bonus plans awarded for increased production do not constitute a progression in earnings as specified in this section.
- (e) Each contractor must certify that it will provide a job equivalent for at least one person for each vacancy resulting from a trainee's career advancement.

Authority: Section 10205(m), Unemployment Insurance Code.

Reference: Sections 10200, 10201(c), (f), 10213, Unemployment Insurance Code.

Effective: April 12, 1991

Amended: November 6, 20001

4409. Special Employment Training Projects.

- (a) The Panel may allocate up to ten (10) percent of the annually available training funds for Special Employment Training (SET) projects to improve the skills and employment security of frontline workers, as defined in §4400(ee), who earn at least the state average hourly wage, except as provided in subparagraphs (a)(4), and (5), and paragraph (b) of this section. These projects are not subject to the out-of-state competition requirement specified in §4416. Nor are participants in these projects subject to the eligibility provision of §10201(c) of the Unemployment Insurance (UI) Code. The Panel shall annually identify industries and occupations that are priorities for funding under this SET category, as specified in the Panel's Strategic Plan. The minimum standards for consideration of proposals to be funded are:
 - (1) Each project shall be funded for no more than \$500,000. The Panel may waive the cap for individual SET projects at any time, upon a showing of good cause by the contractor.
 - (2) A contractor shall be funded with SET funds only once. The Panel, upon a showing of good cause by the contractor, may fund the same SET contractor for a subsequent project.
 - (3) Each project must result in full-time employment, as defined by §4400(h), for all who successfully complete training, except those receiving small business skills training as provided under paragraph (b) of this section.
 - (4) The Panel may fund up to 20 percent of funds annually available for SET projects for frontline workers who earn less than the state average hourly wage, but who earn at least the ETP minimum wage, as provided in UI Code Section 10201(f), and who have multiple barriers which prevent them from fully participating in the labor force as a result of physical disability, lack of communication skills or literacy, or similar factors. In such cases, the applicant must demonstrate how the training will help the trainees overcome the barriers identified.
 - (A) The Panel may exempt projects in this group from the limitations imposed on Panel funded literacy training under §4420, up to 100 percent of the total vocational skills training hours per trainee.
 - (5) The Panel may waive the ETP minimum wage requirements, as provided in UI Code Section 10201(f), for frontline workers in high unemployment areas of the State, as defined in §4400(ii).
 - (A) The 90 day post-training employment retention period for trainees in this group may be completed with up to two participating eligible employers within 120 days, if there is evidence of job security at the end of the retention period. The Panel may, upon a showing of good cause by the contractor, allow for the employment retention period to be completed with three employers.
- (b) The Panel may allocate SET funds for small business skills training to small business owners who meet the definition of frontline workers under §4400(ee)(4), under the following conditions:
 - (1) For the purposes of this subsection the following definitions of "owner" and "employee" shall apply:

- (A) The owner must be registered as a California employer with the Employment Development Department and must be currently subject to the unemployment insurance (UI) tax on behalf of the business' employees. An "owner" is defined as: one or more individuals each having all or a substantial (at least 20%) financial investment in a business; and, who is (are) directly involved full-time in the day-to-day operation of the business.
 - (B) The spouse of an "owner" also qualifies as an "owner" if the spouse is directly involved in the day-to-day operation of the business.
 - (C) An "employee" is an individual receiving monetary compensation while working full-time for a business, and the business is paying into the Unemployment Insurance (UI) fund (subject to the Employment Training Tax) on behalf of the employee for at least six months prior to the first day of training for the owner. For purposes of this subsection an individual cannot be leased or assigned from a temporary employment agency or other provider as an employee.
 - (D) The owner shall not be counted as an employee of the business to meet the number of full-time employees requirement.
- (2) Wages after training are not relevant to small business owner training, since owners typically do not receive an hourly wage.
 - (3) Training must be in business management and/or other related skills needed to operate a successful business, including but not limited to developing a business and/or marketing plan, tax requirements, and permit and licensing procedures.
 - (4) In addition to other requirements of the contract, to qualify for reimbursement, an owner must certify at completion of the training that he/she employs at least the same number of employees on the 91st day after the completion of the owner's training as were employed at the start of the owner's training.
- (c) A training proposal developed and approved under this section shall meet all Panel requirements not otherwise modified or exempted by this section.

Authority: Section 10205(m), Unemployment Insurance Code.

Reference: Sections 10200(a), 10201(c), (f), and 10214.5, Unemployment Insurance Code.

Effective: December 8, 1999

Amended: June 20, 2001, November 6, 2001

4409.1 Employer Contributions.

- (a) A multiple employer contractor may charge participating employers for training-related costs incurred by the contractor that are not reimbursed by ETP, provided the contractor:
- (1) certifies that any charge to the participating employers do not duplicate costs to be reimbursed by ETP;
 - (2) informs ETP of the maximum amount per trainee that a participating employer may be charged; and
 - (3) notifies each participating employer in writing, prior to the start of training, of the cost per trainee that ETP will reimburse, and specifies the amount being charged to the participating employer that is not covered by ETP funding.

A copy of the notification letter sent to the participating employers must be counter-signed by the employer and made available for review by ETP at the contractor's worksite prior to the start of training for that participating employer. The Panel shall make public on its Internet website the name of the multiple employer contractor, the type of training, and the maximum amount per trainee charged to participating employers. No training costs can be passed on to a trainee.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Sections 10205(d), 10206(b), Unemployment Insurance Code.

Effective: April 17, 2000

4410. Substantial Contributions.

- (a) A substantial contribution of not less than 30 percent of the total Panel training and administrative costs, exclusive of in-kind contributions and/or any other special contributions required by the Panel, shall be imposed on any employer for retraining at a facility which previously benefited, directly or indirectly, from Panel funding under at least two prior Panel agreements at the same facility in the amount of \$250,000 or more.
- (b) A substantial contribution of not less than 50 percent shall be assessed on any subsequent agreements, beginning with the fourth agreement, for retraining at the same facility.
- (c) This provision shall apply to employers participating in a consortia contract.
- (d) This provision shall not apply to:
 - (1) small businesses with 100 or fewer full time employees;
 - (2) an employer which has not received the benefit of Panel funding for retraining for a five-year period from the termination date of the last applicable agreement.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Section 10209(d), Unemployment Insurance Code.

Effective: July 19, 1996

Amended: November 26, 1997; July 7, 1998

4410.5 Exemption from Substantial Contributions Requirement

- (a) Notwithstanding the provisions of Regulation 4410, no substantial contribution shall be required from an employer who is seeking funding from the Panel for retraining when the jobs for which the training funds are being sought will be relocated out of state, or the jobs will not exist in California, absent a waiver of the provisions of 22 CCR 4410.
- (b) No waiver shall be permitted without a showing of evidence that the jobs subject to the proposed retraining agreement between the employer and the Panel shall be relocated out of state, or the jobs will not exist in California, unless a waiver of substantial contribution is given. Such evidence shall be provided in the form of a written affidavit or declaration signed under penalty of perjury provided by a knowledgeable officer of the business entity seeking Panel funding.

Authority: Section 10205(l), Unemployment Insurance Code

Reference: Section 10209, Unemployment Insurance Code

Effective: November 9, 1998

4411. Fixed-Fee Contracts.

- (a) The Panel may fund training contracts by applying a standard fixed-fee rate per trainee hour in lieu of a line-item budget to substantiate training costs. These standardized fixed-fee rates per hour may vary depending on the training delivery method (e.g., classroom/laboratory), complexity of the training, size of employer served, and the type of trainee (e.g., retrainee) receiving training.
- (b) The research methodology to develop reasonable fixed-fee rates consists of an analysis of data collected from a representative sample of ETP budget-based contracts and the allowable costs/hour budgeted, and ETP subcontracted classroom/laboratory and structured on-site training costs. The rates were then benchmarked against applicable training market data from programs similar to ETP in other states and training fees charged by private and public training institutions in California.
- (c) To ensure effective training delivery, a classroom/laboratory trainer to trainee ratio will be applied in contracts utilizing the fixed-fee rates. The classroom/laboratory ratio of trainer to trainees is determined using ETP historical data and private and public training institutional data. The classroom/laboratory ratio will also be applicable to training provided via videoconferencing. A trainer to trainee ratio is not applicable to structured on-site training and computer-based training since these training delivery methods are customized to an individual trainee's needs.
- (d) The Panel may adjust the established fixed-fee rates annually.
- (e) For multiple-employer new hire training projects, the following may be included as a cost in addition to the fixed fee:
 - (1) Costs for staff salaries, fringe benefits, consumable supplies, printing, communications, equipment and software, premises, utilities, housekeeping services, travel and advertising/promotion of the ETP program that are incurred as a result of the following new hire activities:
 - (A) Recruitment of training participants.
 - (B) Trainee intake assessment to determine eligibility.
 - (C) Job development, and
 - (D) Job search assistance, and placement in specific jobs.
- (f) For multiple-employer retraining projects the following may be included as costs in addition to the fixed fee:
 - (1) Costs for staff salaries, fringe benefits, consumable supplies, printing, communications, equipment and software, premises, utilities, housekeeping services, travel and advertising/promotion of the ETP program that are incurred as a result of the following activities:
 - (A) Recruitment of participating employers.
 - (B) Assessment of employer-specific job requirements.
- (g) In no event shall the costs allowed in (e) and (f) above exceed 8% of the other training costs,

except that up to an additional 4% will be allowed subject to Panel approval if the contractor makes a showing that the 8% is not sufficient to provide the contractor with the funds to do necessary recruitment of potential new hire trainees.

Authority: Section 10205(l), Unemployment Insurance Code.
Reference: Section 10205(c) and 10206(a), Unemployment Insurance Code.
Effective: April 12, 1991
Amended: July 19, 1996; December 4, 1997; April 17, 2000; September 25, 2000

4412. Reasonable Training and Administrative Costs for Budgets.

Allowable ETP costs are those reasonable training and administrative costs in budget based agreements which include salaries, fringe benefits, and operating expenses and equipment necessary to provide training to eligible participants and to administer the training program. These costs shall bear a direct relation to the number of trainees to be retained in the program and the amount of training time specified in the agreement. ETP will only allow the portion of each eligible cost that can be properly allocated to the ETP training project. All costs must be incurred during the term of the agreement, and none of these costs may, in any way, be attributable to any other funding sources, except for employer contributions.

(a) Training Costs:

- (1) Salaries of those individuals (instructors, instructional aides, trainers, supervisors) providing classroom, laboratory, technology-based distance training, and structured, on-site training to the participants, for hours of actual delivery of instruction, and hours preparatory to instruction. Salaries of those individuals providing training support functions such as curriculum modification and preparation of training materials for the instructors and/or participants.
- (2) Payroll taxes, including FICA, FUTA, State Unemployment Insurance, and Employment Training Tax, that are considered by the Department of Labor to be mandatory taxes incurred as business expenses. All payroll taxes should be individually identified.
- (3) Fringe benefits are perquisites paid by an employer to employees, either voluntarily or by collective bargaining agreement, in addition to the employees' basic hourly or monthly compensation or remuneration.
 - (A) Fringe benefits may include one or more of the following:
 1. vacation pay;
 2. holiday pay;
 3. sick leave;
 4. health insurance plans;
 5. hospitalization coverage;
 6. retirement or pension plan;
 7. life insurance (if the employer is not the beneficiary); and/or
 8. military leave.
 - (B) The fringe benefit should be automatically and uniformly available to all those covered by the benefit package in comparable employment with the same employer.
 - (C) Any elective benefits selected on an individual basis, that are not available to all employees of an individual employer, should not be included in the list of fringe benefits.
- (4) Operating expenses and equipment costs including consumable supplies, communications, equipment, software and licenses, premises, utilities, housekeeping services, travel, printing, transmission (computer time), system maintenance, and subcontractor and vendor fees directly related to the delivery of training.
 - (A) Equipment: The cost of equipment used for classroom, laboratory, and

technology-based distance training may be claimed for the actual amount of time in use during those training components. The cost of equipment used for structured, on-site training is not allowable. The cost of purchased equipment, less salvage value, shall be prorated based on its useful life. Useful life shall be determined using the class life established in the most recent version of IRS Publication 946. Useful life for training-related computer hardware and software used in classroom/lab settings shall be three (3) years and one (1) year, respectively. Once the useful life has expired, the equipment or software cannot continue to be claimed as an expense; only service and maintenance costs are allowable.

The contractor's/subcontractor's total cost incurred to lease and/or rent equipment shall not exceed the cost to purchase the same equipment, less salvage value. The contractor/subcontractor must obtain three (3) written bids for leased equipment. Allowable lease/rental costs will be that portion of the total lease/rental cost (or purchase cost less salvage value, whichever is less) allocable to ETP training.

(B) Premises:

1. Premises, other than the facilities or work site of the contractor (i.e., off-site facilities), may be claimed as a training expense if sufficient justification is shown for the need to train at a location other than the contractor's facility or work site.
2. Multiple-employer contractors (MECs) may be reimbursed for a proportional share of actual on-site premise cost if the costs are incurred during classroom, laboratory, or technology-based distance training. Premises cost may include rent, depreciation of building cost, property/liability insurance, property tax, security, parking fees paid by contractor, and facility repair deemed necessary to the project. Each of these costs must be separately identified.
3. If all training takes place at the employer contractor's work site, the contractor's premises costs can only be allowed as an in-kind contribution.

(C) Utilities and Housekeeping: may be claimed for on-site training only if they are additional expenses incurred because of the training program or if the contractor is a MEC.

(D) Subcontractors: shall prepare individual, line-item budgets and are subject to the same limitations and restrictions as the primary contractor. Individual budgets are not required for contract laborers.

(E) Miscellaneous:

Miscellaneous costs shall not exceed ten percent of all other operating equipment and expenses associated with the delivery and administration of the training project. The contractor need not document the breakdown of the items included in this category.

- (F) Profits are permitted only for private, for-profit MECs or for subcontractors and shall not exceed five (5) percent of the total training and administrative costs without justification and prior approval.
- (5) For costs associated with new hire trainees, the following will be permitted as a training cost:
 - (A) Staff salaries, fringe benefits, consumable supplies, printing, communications, equipment and software, premises, utilities, housekeeping services, travel, and advertising/promotion of the ETP program that are incurred as a result of the following new hire activities:
 - 1. Recruitment of training participants
 - 2. Trainee intake assessment to determine eligibility
 - 3. Job development, and
 - 4. Job search assistance, and placement in specific jobs.
- (6) For costs associated with multiple-employer contract retraining the following may be included as training costs:
 - (A) Recruitment of participating employers
 - (B) Assessment of employer-specific job requirements.
- (7) In no event shall the training costs allowed in (5) or (6) exceed 8% of the other training costs, except that up to an additional 4% will be allowed subject to Panel approval if the contractor makes a showing that the 8% is not sufficient to provide the contractor with the funds to do necessary recruitment of potential new hire trainees and/or employers.
- (b) Administrative costs:
 - (1) Salaries of those individuals (managers, administrators, coordinators) for time directly spent in the implementation and operation of the training program, evaluation and modification of the program, scheduling and tracking of trainees, maintaining training records, and coordinating with ETP staff.
 - (2) Payroll taxes and fringe benefits related to program administration.
 - (3) Operating expenses and equipment costs related to program administration, similar to those allowed as training costs. For MECs, the overhead costs of doing business may be prorated between the ETP project and other activities. The portion of each allowable overhead cost applicable to the ETP project may be claimed; however, no portion of unallowable costs may be claimed. Examples of unallowable costs include: bad debts, fines/penalties, entertainment, lobbying, alcoholic beverages, contributions/donations, and state/federal income taxes.
 - (4) The salaries and fringe benefits of project directors, program managers, supervisors and other administrative positions who both instruct and supervise other instructors or otherwise perform both training and administrative duties as prescribed in an official duty statement shall be prorated among the training and administrative cost categories based on time records or other verifiable means.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Sections 10201(b), 10205(c), (d), (e), 10206(a)(1)(B), 10209(f),
Unemployment Insurance Code.

Effective: April 12, 1991

Amended: March 9, 1993; December 4, 1997, December 20, 1999; April 17, 2000; September 25,
2000

4412.1 Training Costs Charged to Trainees.

- (a) Unless otherwise permitted herein, or with written approval from the Executive Director of the Panel, trainees being trained under a contract funded by the Panel cannot be charged for any training costs.
 - (1) If the contractor is receiving Panel funds based on a budget, that budget must accurately reflect all training costs to be paid by the Panel, the employer or by any other specified source. If books or other supplies are to be purchased by the students, they will have to be specifically and clearly identified as a funding source in the budget.
 - (2) A company cannot indicate an in-kind contribution for supplies or books, then require the trainees to purchase these items, since in-kind contributions are defined by this title as costs covered by the employer/contractor and not by a third party (i.e. the trainee).
- (b) The Panel recognizes that there is an inherent risk factor in implementing a new hire training program. This risk cannot be transferred to the trainees enrolled in that program in any manner, whether by reimbursable fee or otherwise.
- (c) If the Panel determines any charges have been made to students which are not authorized by the Panel or by statute, the Panel shall offset such monies from any reimbursement due to the contractor, or if monies have been paid to the contractor, the Panel shall seek reimbursement for such funds. Failure of the contractor to reimburse for these charges is sufficient reason for denying any future Panel funds to the contractor.
- (d) Entrepreneurial training projects are exempt from these provisions.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Section 10206(a), Unemployment Insurance Code.

Effective: December 4, 1997

Amended : April 17, 2000

4412.2 Third Party Fees.

- (a) The Panel finds that any contract between a potential contractor and a third party for any service relative to any Panel contract, either pre-award work, or post-award work, or both, which conditions reimbursement to that third party as tied to a percentage of Panel funds requested, preliminarily granted or finally granted to the contractor is contrary to public policy.
- (b) A contractor will not be eligible for Panel funding if the contractor is a party to any agreement containing reimbursement provisions as set forth in subsection (a).
- (c) The Panel may require any proposed contractor to supply any information related to the costs incurred by the contractor relative to the proposed training program, both predevelopment and development costs.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Section 10206(a)(1)(D), Unemployment Insurance Code.

Effective: December 4, 1997

4413. Subcontracts.

- (a) Contractors may enter into third party agreements for both training and administrative services provided that the subcontracts for services are within the scope of the training plan and a clear delineation of services to be provided as they relate to the training plan is specified in writing and approved by the Panel prior to the delivery of the contracted services.
- (b) Subcontracts shall include:
 - (1) the name, title, address, and phone number of the signatory authority for the contract of the subcontracted entity;
 - (2) a detailed explanation of the services to be provided;
 - (3) the inclusive dates of the term of the subagreement contract which shall occur within the term of the primary contract with the Panel; and,
 - (4) the negotiated amount of the subagreement contract supported by a line-item budget, if necessary. Administrative subagreements contracts that represent more than 40 percent of the primary contractor's total administrative budget shall be performance-based and final payments for services rendered under these subagreements contracts shall not be earned until trainees complete training and the specified employment retention period.
 - (5) all paragraphs, clauses and sections mandated by state law including, but not limited to, Nondiscrimination Clause (OCP-1) as set forth at 2 Cal. Code of Regs. §8107 (1996).
 - (6) provision that the Panel is not a party to the subcontract and not obligated in any manner to the subcontractor for the conduct of the Contractor or for any liability that might arise out of the form or content of the subcontract.
 - (7) provision that ETP, upon reasonable notice, shall have the right during normal business hours, to examine and audit any and all records, books, papers and documents related to the conduct of the ETP funded project to the extent ETP believes it necessary to assure compliance with the ETP agreement.
 - (8) provision that ETP or its duly authorized representative shall have the right during normal business hours to freely observe and monitor, without the presence of the subcontractor or Contractor all performance under the subcontract, including interviews with trainees and employees.
 - (9) provision that the subcontract must be approved as to form by ETP prior to its execution. Provision that the subcontract is effective only if the agreement between the Panel and the Contractor is executed between those two parties.
 - (10) provision that if the agreement is terminated prior to its expiration all finished or unfinished documents, data, studies and reports prepared by the Subcontractor for the Contractor shall be disposed of under the direction of the Contractor and the Panel.
- (c) All subcontracts shall contain an indemnification clause which to the extent permitted by law provides that the subcontractor will indemnify, defend and hold harmless the Contractor and

the Panel, their officers, agents and employee from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material man, laborers and any other person firm or corporation furnishing or supplying work, services, material or supplies in connection with the performance of the subcontract and from any all claims and losses accruing or resulting to any person firm or corporation which may be injured or damaged by the subcontractor during the term of the subcontract.

- (d) All sub-tier contracts to the subcontract discussed herein shall be subject to the same approval and content requirements as the primary subcontractor.

Authority: Section 10205(l), Unemployment Insurance Code

Reference: Section 10206(a), 10208, 10209(f), Unemployment Insurance Code

Effective: April 12, 1991

July 19, 1996

4414. Job Creation.

- (a) The Employment Training Panel shall consider the following training projects as meeting the statutory requirement to foster job creation, provided that all other requirements are met:
 - (1) New hire;
 - (2) Recently employed (defined as individuals employed for less than 90 days at the start of training, and at the time of hire would have qualified as an eligible new hire trainee);
 - (3) California Career Ladders to the 21st Century.

Authority: Section 10205(m), Unemployment Insurance Code.

Reference: Section 10200(a)(1), Unemployment Insurance Code.

Effective: April 14, 1995

Amended: November 6, 2001

4415. Workforce Training.

- (a) The Panel shall fund training for frontline workers, in addition to training for other support staff.
 - (1) Retraining of supervisors and managers shall not exceed 40 percent of the total trainees in a retraining contract. The Panel shall waive this requirement for small businesses with 50 or fewer employees.
 - (2) The 40 percent cap on training of supervisors and managers shall not apply to Total Quality Management training, nor to training for a high performance workplace, as defined in Section 10201(b)(3) of the Unemployment Insurance Code. The Panel shall waive this requirement for special employment training projects as defined under Unemployment Insurance Code Section 10214.5.

Authority: Section 10205(k), Unemployment Insurance Code.

Reference: Sections 10200(a); 10201(b)(3), Unemployment Insurance Code.

Effective: April 14, 1995

4416. Out-of-State Competition.

- (a) For purposes of Panel funding, out-of-state competition exists if the individual function and/or unit of a company for which training funds are sought meets the following conditions:
- (1) produces a product sold out-of-state; and/or
 - (2) produces a product sold in-state which competes with products produced out-of-state; and/or
 - (3) provides a service out-of-state; and/or
 - (4) provides a service in the state in competition with providers of the same service which are located outside the state.
- (b) A company engaged in manufacturing is deemed to meet the out-of-state competition requirement for purposes of Panel funding if that company meets the definition of Division D, Manufacturing as contained in the Standard Industrial Classification (SIC) Manual, or is assigned by the Employment Development Department a SIC within Division D, Manufacturing, Major Groups 20-39 as follows:

STANDARD INDUSTRIAL CLASSIFICATIONS OF
THE MANUFACTURING INDUSTRY

Division D.: Manufacturing	
Major Group Number	Products
20	Food and Kindred products
21	Tobacco products
22	Textile Mill products
23	Apparel and other finished products made from fabrics and similar materials
24	Lumber and wood products, except furniture
25	Furniture and Fixtures
26	Paper and allied products
27	Printing, publishing and allied industries
28	Chemicals and allied products

Division D.: Manufacturing	
Major Group Number	Products
29	Petroleum refining and related industries
30	Rubber and miscellaneous plastic products
31	Leather and leather products
32	Stone, clay, glass and concrete products
33	Primary metal industries
34	Fabricated metal products, except machinery and transportation equipment
35	Industrial and commercial machinery and computer equipment
36	Electronic and other electric equipment and components, except computer equipment
37	Transportation equipment
38	Measuring, analyzing and controlling instrument; photographic, medical and optical goods; watches and clocks
39	Miscellaneous manufacturing industries

- (c) companies assigned to any of the following SIC codes are also deemed to meet out-of-state competition:

Major Group	Industry Group(s) Title or Number	Products
01	Agricultural Production	Crops
02	Agricultural Production	Livestock and Animal Specialities
08	Industry Group 081	Timber Tracts
	Industry Group 083	Forest Nurseries
09	Fishing, Hunting & Trapping	
10	Industry Groups 101-106, 109	Metal Mining
12	Industry Groups 122 & 123	Coal Mining
13	Industry Groups 131 & 132	Oil & Gas Extraction
14	Industry Groups 141-147 & 149	Mining of Nonmetallic Minerals
73	Industry Number 7372	Prepackaged Software
78	Industry Number 7812	Motion Picture Production

- (d) A company is also deemed to be facing out-of-state competition if it meets any of the following categories:
- (1) The applicant is located in California, and is the Corporate Headquarters of a company that does significant business outside of California. In addition to the Corporate Headquarters, a company's facility is eligible if it provides significant support services to the company's offices, operations, divisions, branches, stores, or franchises located outside of California.
 - (2) The applicant is a mortgage bank or related institution engaged in the packaging/sales and/or servicing activities related to loans. These loan activities must be conducted by the bank or institution within California. Only those jobs directly involved with the mortgage banking function will be considered for training.
 - (3) The applicant is a destination resort, convention/conference center or convention/conference hotel which competes nationally and/or internationally for customers, as set forth below:

- (A) Destination resort means an establishment and its affiliated facilities which:
1. is a recognized destination, or
 2. operates in conjunction with, or by virtue of, a destination recreational complex or attraction, and has derived at least 25 percent of its gross annual revenue from out-of-state visitors.
- (B) For purposes of this subsection, the term "destination" refers to the establishment, recreational complex, or attraction being itself the primary reason for people traveling to it. A city is not, in and of itself, a destination.
- (C) For purposes of this subsection, the term "convention/conference center" means an establishment primarily dedicated to holding conventions, conferences, and/or trade shows or exhibits.
- (D) For purposes of this subsection, the term "convention/conference hotel" means an establishment which derives at least 25 percent of its gross annual revenue (inclusive of rooms and food/beverage revenues) from conventions, conferences, and/or trade shows or exhibits involving transient lodging requirements.
- (E) A destination resort, convention/conference center or convention/conference hotel will be deemed to compete nationally and/or internationally for customers if it meets at least three of the following criteria:
1. Participates in out-of-state sales missions or trade shows;
 2. Routinely conducts out-of-state sales efforts;
 3. Routinely advertises in media in which its out-of-state competitors also advertise;
 4. Contributes financially to joint community based out-of-state marketing efforts;
 5. Maintains a marketing plan which addresses the national/international market; or
 6. Documents that it is in competition with similar establishments outside of California.

Authority: Section 10205(l), Unemployment Insurance Code.
Reference: Section 10200(a), Unemployment Insurance Code.
Effective: July 19, 1996

4417. Secure Job.

- (a) The Panel shall fund training for employment that is stable. The employer's turnover rate shall not exceed 20% annually for the company facility where training is being requested. The Panel may accept a higher turnover rate if the employer provides evidence that the proposed training will significantly decrease the turnover rate, or the employer has experienced a singular reduction in force or other occurrence which adversely affected the turnover rate in the last calendar year, or if industry data supports a higher turnover rate.

If the contractor fails to maintain the turnover rate provided for in the Panel agreement, the contractor will not earn the final 25% payment which would otherwise be due under the agreement if all other terms are met.

- (1) Turnover is calculated as follows:

The number of full-time workers who separated from their jobs during the last calendar year divided by the average number of full-time workers employed during the same period of time at the same company site(s).

- (2) In addition, the following types of employment separations shall be included in the number separating during the year:

- (A) Quits
- (B) Layoffs of more than 30 days
- (C) Discharges for cause
- (D) Retirements
- (E) Unauthorized absences of more than one week
- (F) Deaths
- (G) Transfers to another company facility, and
- (H) Permanent separations due to disability.

- (3) The following are excluded from the definition:

- (A) Temporary layoff (30 days or less)
- (B) Workers on strike
- (C) Outside consultants and contractors
- (D) Workers from temporary help agencies

Authority: Section 10205(l), Unemployment Insurance Code.
Reference: Section 10200(a)(3), Unemployment Insurance Code.
Effective: April 14, 1995
Amended: July 19, 1996

4418. Wage Criteria.

- (a) The Employment Training Panel (Panel) shall establish regions for the determination of a Panel regional average hourly wage based on Employment Development Department, Labor Market Information Division data. The Panel regions shall be a configuration of contiguous counties that meet the following criteria:
 - (1) Similar employment and industrial base.
 - (2) Similar seasonal patterns.
 - (3) Recently experienced similar trends or changes in their economy.
 - (4) Reasonably similar annual average Panel wages.
 - (5) Tend to be either rural, semi-rural, or urban.
 - (6) Reasonably similar unemployment rates.
- (b) Panel regions shall be reviewed on an annual basis to ensure that the regions continue to meet the criteria.

Authority: Section 10205(k), Unemployment Insurance Code.

Reference: Section 10201(g), Unemployment Insurance Code.

Effective: April 14, 1995

4419. Health Benefits.

(a) The Panel may consider the dollar value of health benefits voluntarily paid by an employer in the calculation of a trainee's after retention wage to meet the minimum wage requirements.

(1) Health benefits include medical, dental, and/or vision insurance.

(2) The Panel shall use the following formula to calculate a trainee's after retention minimum wage that includes health benefits:

The total monthly amount paid (retrainee) or to be paid (new hire) by employer, divided by total hours of employment per month, then add hourly health benefit amount to hourly wage for total hourly wage.

(3) Health benefits paid pursuant to a collective bargaining agreement are deemed to be voluntary.

Authority: Section 10205(k), Unemployment Insurance Code.

Reference: Section 10201(g), Unemployment Insurance Code.

Effective: April 14, 1995

4420. Literacy Training.

Funding for basic skills and literacy training shall be approved only if the employer or contractor has submitted a written evaluation of individual trainee literacy needs necessary to perform job requirements.

In no event shall basic and literacy skills training hours funded by the Panel exceed 45% of the total vocational skills training hours per trainee, except for projects funded as special employment training for frontline workers with multiple barriers to full participation in the labor force, welfare to work trainees, and working poor trainees in high unemployment areas of the State.

Authority: Section 10205(m), Unemployment Insurance Code.

Reference: Sections 10201.5, 10209(a), 10214.5, 10214.7, Unemployment Insurance Code.

Effective: April 14, 1995

Amended: December 1, 1995; July 8, 2001

4420.5 Safety Training.

The Panel shall not fund "general industry safety training" (8 Cal. Code of Regs., Subchapter 7, General Industry Safety Orders) mandated by law for the operation of a business in California. "General industry safety training" is the responsibility of the employer, and costs attributable to this type of training must be assumed by the employer.

(a) For purposes of this section, safety training includes injury and illness prevention, emergency action, evacuation, fire prevention plans, access to first aid, and other related training.

(b) The Panel may fund a limited amount of safety training directly related to, and in conjunction with, skills training on a new piece of equipment and/or new process, i.e., the equipment and/or a process may be recently acquired, or one an employee is not familiar with. Cross-training and/or upgrade training may also require this limited safety training.

(c) (1) The Panel shall not fund any such limited safety training which exceeds 10 percent of the total job-related vocational skills training hours in the curriculum unless approved by the Assistant Director of Program Operations upon a showing of good cause by the potential Contractor.

(2) Some occupations, by the very nature of the work, require intensive skills training in safety procedures. Workers engaged in environmental clean-up and oil/gas extraction are examples of vocational skills training that would include a concentration of safety procedures. Funding for these and similar occupations would not be subject to the restrictions herein.

Authority: Section 10205(l), Unemployment Insurance Code.
Reference: Section 10205(d), Unemployment Insurance Code.
Effective: May 18, 1998

4421. Out-of-State Vendors.

- (a) Except as otherwise provided, the Panel shall not reimburse an employer or contractor for any costs associated with an out-of-state vendor, either through a budget or the Fixed Fee Rate Table, if those costs are for services, such as training.
 - (1) For purposes of this section, an out-of-state vendor is defined as an entity which has not maintained an office in California with one or more California employees for more than six months prior to the start date of the Panel contract.
 - (2) If an out-of-state vendor meets the definition in paragraph (1), costs attributable to the California office and California employee(s) shall be reimbursable.

The Panel may authorize reimbursement for the cost of services provided by an out-of-state vendor which does not have a California office and employees only if the Panel finds that such services are unique to the need of the employer or contractor and are unavailable in California.

Authority: Section 10205(k), Unemployment Insurance Code.

Reference: Section 10206(a), Unemployment Insurance Code.

Effective: December 1, 1995

4422. Orientation Modules.

The Panel shall not reimburse an employer or contractor for training components designed to orient new or current employees to the policies or philosophy of either the employer(s), or of the Panel.

Authority: Section 10205(c), Unemployment Insurance Code.

Reference: Section 10209(a), Unemployment Insurance Code.

Effective: December 1, 1995

4425. Structured On-Site Training.

- (a) Structured, on-site training (SOST) shall provide for the acquisition of skills on-the-job.
 - (1) When included in a training program, SOST shall follow classroom and/or laboratory instruction.
 - (2) SOST shall be supervised by an individual with a demonstrated competency in the subject area, who is not simultaneously enrolled in the same training group.
 - (3) SOST shall follow a planned methodology for the delivery of job tasks and specify the minimum competencies to be gained.
 - (A) The contractor shall identify the minimum competencies necessary to perform the job and develop the curricula that identifies the tasks and duties to be trained.
 - (B) The contractor shall develop a SOST monitoring plan detailing how the SOST training provider will monitor the trainee's progress by observing, assessing and documenting the completion of each task.
- (b) No funding shall be authorized for SOST hours under a literacy training program.
- (c) The Panel shall reimburse SOST as follows:
 - (1) Frontline workers: Two (2) hours of SOST for every hour of classroom/laboratory training, except for training in Sales Techniques and Customer Service training which shall be limited to one (1) hour of SOST for each hour of classroom/laboratory training.
 - (2) Managers/Supervisors: One (1) hour of SOST for each hour of classroom/laboratory training. This limitation for managers/supervisors does not include a line supervisor with direct supervisory responsibility for frontline workers if that line supervisor is being trained in front line skills.

The ratios specified in paragraphs (1) and (2) above shall be applied to the total number of training hours per trainee according to the type of training. The Panel may authorize curricula that varies from the prescribed ratios upon presentation of written justification from the contractor during contract development.

Authority: Section 10205(c), Unemployment Insurance Code.

Reference: Sections 10201(l), (j), and 10209(b), Unemployment Insurance Code.

Effective: December 1, 1995

4426. Training Agency Projects.

- (a) For purposes of funding contracts with a training agency as defined in Section 4400(z), the Panel may contract with the following educational entities:
 - (1) a community college;
 - (2) a university;
 - (3) a foundation formed under Education Code, Section 89900 et seq.;
 - (4) an adult school;
 - (5) a Regional Occupational Program (ROP); or
 - (6) an institution approved and certified by the Council for Private Postsecondary and Vocational Education ("Council").
- (b) A training agency (§4400(z), Title 22 Cal. Code of Regs.) and any institution approved and certified by the Council may function as either the training provider or as both the training provider and the administrator under a Panel contract. When the training agency is contracting with the Panel to provide training, it must directly provide the training and may only subcontract training that is ancillary to the primary training as specified in the Panel contract. In addition, a training agency may act as the training administrative contractor, performing only the function of administering the contract, if that training administrative entity meets all the requirements of Section 10210 of the Unemployment Insurance Code, has a successful history of contracting with the Panel for a period of not less than three years, and the Panel finds that:
 - (1) it is the most effective means of contracting to serve the needs of multiple employers, primarily small businesses; and
 - (2) the training agency is unable to directly conduct the primary training in the program; and
 - (3) the training agency conducts other training in the normal course of its business; and
 - (4) the training administrative entity has approval from the Council in one or more courses of instruction, training or study; and
 - (5) any entity with which it subcontracts must be a local educational agency.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Sections 10201(f), 10206(a), 10208, 10210, Unemployment Insurance Code.
Section 94302(h) and (k), Education Code.

Effective: July 19, 1996

4427. Retained in Employment with a Temporary Agency.

- (a) The Panel may fund training for employees of a temporary employment agency only as set forth herein. Temporary employment agencies employ both permanent and temporary workers. The permanent worker performs administrative duties for the agency, usually on the agency's premises. The temporary worker provides services to clients of the agency ranging from clerical to professional, usually on the premises of the client.
- (b) Employment retention for purposes of a Panel contract will be permitted with temporary employment agencies only in the following circumstances:
 - (1) As permanent workers of temporary employment agencies being retrained, as long as the business meets all other funding requirement criteria.
 - (2) New hire trainees trained under a contract with a consortium/training agency may be retained in employment with temporary employment agencies as temporary workers with the following limitations:
 - (A) These placements shall be only on an incidental basis. Incidental placements are placements of new hire trainees as temporary workers with temporary agencies that were not originally planned when the contract was approved and which are no more than 10 percent of the total actual number of new hires placed into employment under the contract;
 - (B) These placements are not the intent of the project from inception, meaning temporary employment agencies are not acceptable as core group employers in the contract to substantiate employer demand; and
 - (C) These placements must complete a retention period of 180 consecutive days with the same temporary agency before payment is considered earned.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Section 10201(g), Unemployment Insurance Code.

Effective: December 4, 1997

4428. Welfare to Work Projects.

- (a) The Panel shall allocate funds available in the annual Budget Act for training programs designed for individuals who are currently working and receiving benefits under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code or who are currently working and have received CalWORKs (California Work Opportunity and Responsibility to Kids, Chapter 270, Statutes 1997) benefits within one year of the commencement of the training program.
 - (1) Applicants for funding under this section shall describe the specific steps planned to recruit welfare recipients, including their background and expertise in working with the welfare population.
 - (2) Applicants shall describe their partnerships with other entities involved in Welfare to Work efforts, particularly those providing complementary supportive and funded activities, including but not limited to child care and transportation, for trainees during the training and employment retention period.
 - (3) Contractor shall provide evidence to the Panel that trainees meet the eligibility criteria set forth above, as verified by the trainee's county of residence.
 - (4) All proposals shall include the contractor's plan for the identification and collection of appropriate program data to assist the Panel in evaluating the training project. Upon completion of the term of the agreement, contractor shall submit its evaluation of the project to the Panel.
 - (5) A training proposal developed and approved under this section shall meet all Panel requirements not otherwise changed, waived, exempted, or eliminated by this section.
- (b) The following shall apply to projects funded under this section:
 - (1) Welfare to Work projects need not meet the out-of-state competition requirement applicable to other retraining projects, specified in section 4416, nor must potential contractors satisfy the requirement that businesses meet one of three additional retraining certification requirements, specified in section 4441.
 - (2) Trainee eligibility shall be determined as set forth in Unemployment Insurance Code Section 10214.7 for participants in projects funded under this section.
 - (3) Trainees who meet eligibility criteria may participate in projects funded under this section if they are employed at least 20 hours per week during training. The Panel has the discretion to consider variable workweeks if 20 hours per week is not possible. However, in no case shall the trainee be employed for less than an average of 20 hours per week during training. However, trainees shall work a minimum of 30 hours per week during the 90 day employment retention period.
 - (4) Training may consist of vocational skills training or "soft skills/life skills" training or a combination of both, as necessary for successful transition to work and retention of employment. "Soft skills/life skills" are defined as skills necessary to interact successfully with others, provide for workplace readiness, and help to balance work and personal life.
 - (5) Safety training that is job-related may be included in projects funded under this section.

- (6) Trainees shall be retained in employment for a minimum of 90 days out of 120 consecutive days following completion of training with no more than three eligible employers.
 - (7) Each project shall result in full time employment for all trainees who successfully complete training.
 - (8) No enrollment cap shall be applied to trainees participating in a project funded under this section.
 - (9) Trainees may be employed, trained and retained in employment by temporary employment agencies both as part of the agency's internal staff and/or as workers providing services to clients of such agencies.
- (c) The following are waived for projects funded under this section based on the Panel's determination that such waivers are necessary to provide the requested training to CalWORKs recipients and to effectively implement the training project:
- (1) Provisions of section 4425, Structured On-Site Training, to allow SOST training without classroom and/or laboratory instruction, to allow variances in training ratios, and to allow the provision of SOST during literacy training. SOST may include on-the job coaching, which is one-on-one direct guidance, and can only be funded for welfare-to-work trainees. On-the-job coaching provides for the dedication of a trainer's time to a single individual in the vocational skills and/or soft skills/life skills training necessary to ensure employment retention and encourage career advancement.
 - (2) Requirements of section 4410, Substantial Contribution, for Welfare to Work trainee projects. If an applicant is subject to a substantial contribution, then such contribution shall be applied to all non-Welfare to Work retrainees.
 - (3) Limitation on training hours for trainees in this section, if the Panel determines additional training will help ensure successful retention in employment.
 - (4) Requirements of section 4417, Secure Job, if the proposed project is solely for Welfare to Work trainees.
 - (5) Limitations of section 4420, Literacy Training, and permit the funding of basic and literacy skills training up to 100 percent of the total vocational skills training hours per trainee.
 - (6) Wage requirements set out in Unemployment Insurance Code Section 10201(g), but in no event shall trainee wages be less than the State or Federal minimum wage (exclusive of health benefits), whichever is higher.
- (d) Welfare to Work trainees will be subject to the general rules applicable to new hires, not regular retraining, in the following categories: (1) Fixed Fee; (2) Class Size; (3) Allowable Administrative Costs; and (4) Incidental placement of trainees with public and non-profit entities.

Authority: Section 10205(l), Unemployment Insurance Code.
Reference: Section 10214.7, Unemployment Insurance Code.
Effective Date: January 1, 1998
Amended: June 11, 1998; May 7, 1999

Article 3. Panel Operations

4430. (Reserved)

4431. Public Records.

- (a) Requests for public documents shall be made to the panel in writing and shall contain: the name of the requestor; the address and telephone number of the requestor; and, the specific documents being requested.
- (b) Charges for Document Requests
 - (1) A per page photocopying fee shall be charged to all individuals and organizations filing a request for public documents.
 - (2) A reasonable charge for panel staff labor spent copying public information will be assessed.

Authority: Section 10205(k), Unemployment Insurance Code

Reference: Section 10205(k), Unemployment Insurance Code

Effective: April 12, 1991

4432. Incompatibility.

No public officer serving the people of the state of California through the panel shall hold any other public office where such offices are incompatible in their natures or in the rights, duties, or obligations connected with or flowing from them.

Offices are incompatible where the functions of the two are inherently inconsistent or repugnant, as where antagonism would result in the attempt by one person to discharge the duties of both offices, or where the nature and duties of the two offices render it improper from considerations of public policy for one person to retain both.

Authority: Section 10205(k), Unemployment Insurance Code

Reference: The People ex.rel. Chapman v. Rapsey (1940) 16 Cal. 2d 636

Effective: April 12, 1991

4433. (Reserved)

Article 4. Program Operations

4440.1 Advances.

- (a) An advance for start-up expenses shall be provided only to public agencies and private, nonprofit organizations upon determination that an advance payment is essential for the effective implementation of a training program, and to the extent funds are available.
- (b) An advance may be granted no more than once per contract.
- (c) The amount to be advanced shall not exceed 15 percent of the total amount of the contract.
- (d) No advance payment shall be granted if the total contract exceeds \$400,000 without the prior approval of the State Department of Finance, pursuant to Section 11019 (a) of the Government Code.
- (e) A Fidelity Bond shall be required in the amount equal to or greater than the amount specified for the advance. The Panel shall be named the Certificate Holder.
- (f) Nonprofit organizations shall be required to deposit such funds in a separate trust account with the Panel as beneficiary. Public entities are only required to account for funds separately. Any interest or dividends earned shall be used to reduce the costs incurred under the contract.
- (g) All advances shall be held in trust for ETP and only spent by the contractor for operation of the contract.
- (h) Payment of an advance shall be made as specified in the Contract when accompanied by a showing of the necessity for an advance, an invoice and a detailed statement of estimated costs for the period to be covered by the advance.
- (i) The contractor shall require its insurance carrier to forward a Fidelity Bond with an original signature to the Panel before an advance can be authorized.

Authority: Section 10205(k), Unemployment Insurance Code

Reference: Section 10206(a), Unemployment Insurance Code

Effective: April 12, 1991

Amended: December 1, 1995

4440.2 Progress Payments.

- (a) Progress payments may be negotiated and authorized during the course of operation to assist in offsetting the costs incurred in the delivery of the training plan. Progress payments shall not be authorized for more than 75 percent of the cost per trainee. Twenty-five percent shall be withheld until the trainee has been retained in employment for the specified employment-retention period following training.
- (b) When permitted by the Panel, progress payments shall be specified in the payment schedule of the agreement and shall be authorized no more than once per month.
- (c) Progress payments shall be made as specified in the Agreement when accompanied by an invoice and the appropriate documentation substantiating the completion of the performance requirements.
- (d) Progress payments and the final payment may be suspended at the sole discretion of the Employment Training Panel if the Panel finds that the contractor is out of compliance with the terms and conditions of the Agreement. The Contractor shall be given written notice for the reason for the suspension of payment. The contractor must correct any deficiency which was the reason for the suspension of payment before the suspension of payment of funds will be revoked.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Section 10209(f), Unemployment Insurance Code.

Effective: April 12, 1991

Amended: December 1, 1995, July 19, 1996

4440.3 Term Date and Start Date of Training.

- (a) The beginning term date of an agreement cannot be earlier than the date of Panel approval of the Final Agreement.
- (b) The Contractor may commence training prior to execution of the contract only upon receipt of written authorization from the Panel. This authorization shall include any stipulations and/or conditions which must be met before training can begin.
 - (1) The start date of training shall be at least seven (7) working days following approval of the final contract. The Executive Director may waive the seven day requirement and adjust the start date of training upon justification by the Contractor.
 - (2) Contractor shall acknowledge the authorization letter from the Panel by signing and returning a written notice of acceptance prior to the commencement of training.
 - (3) Reimbursement pursuant to the terms of the agreement shall be made only if the agreement is executed by both parties and all terms and conditions of the contract are met by the Contractor.

Authority: Section 10205 (l), Unemployment Insurance Code.

Reference: Section 10209(a), Unemployment Insurance Code.

Effective: December 1, 1995

Amended: May 18, 1998

4441. Retraining Certification.

- (a) All potential retraining contractors and all participating retraining employers under a consortium or training agency contract shall submit an acceptable Retraining Certification (RC). Special Employment Training (SET) projects are excluded from this requirement.
- (b) An acceptable retraining certification justifies and documents how an employer meets Panel funding criteria for retraining current workers who have been employed for 90 days or more. The employer must:
 - (1) Experience out-of-state competition as required by the Panel under this Article;
 - (2) Justify the need for training;
 - (3) Provide secure jobs;
 - (4) Exhibit a commitment to training; and
 - (5) Plan to evaluate the impact of the proposed training.
- (c) The information requested in a RC may be modified by the Panel for small businesses seeking training for current workers to further serve the training needs of small business and the economic development intent of the Panel mandate.
- (d) A RC must be submitted in a format prescribed by the Panel as specified below and must have the concurrence of both the employer and any collective bargaining unit representing the workers to be trained.
 - (1) The RC must confirm that the employer or contractor meets the funding criteria specified in (b) above and be submitted on company letterhead, dated and signed by an authorized company representative with authority to sign legal documents.
 - (2) If the retrainees are covered by a collective bargaining agreement, a union representative must submit a letter on union letterhead, indicating concurrence with the proposed Panel training project, which includes the printed name, title, and signature of the union representative as well as the date.
- (e) Consortium or Training Agency Applicant
 - (1) An employer participating under a consortium or training agency contract must complete and submit an individual RC as set forth in (b) above to the contracting entity for Panel approval. Based on the individual RC's submitted for the core group, a consortium or training agency applicant shall develop a generic RC for the contract written on contractor's letterhead. A core group is a sufficient number of employers to demonstrate the need for training. First time contractors and previous contractors with poor contract performance shall be required to supply a greater number of interested employers than contractors which have demonstrated successful contract performance. The generic RC must represent the composition of the core group of participating employers by summarizing the information on the individual RC's, including how they meet the criteria for funding in (b) above. The generic RC may require revision if the composition of the group of participating employers changes significantly from the core group.
 - (2) Each participating employer RC must be approved by the Panel.
 - 3) If an employer is denied participation under a consortium or training agency contract, an explanation for the denial shall be sent to the contractor.

- (4) If the retrainees are covered by a collective bargaining agreement, a union representative must submit a letter on union letterhead, indicating concurrence with the proposed Panel training project, which includes the printed name, title, and signature of the union representative as well as the date.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Sections 10200, 10201(b)(2)(A), 10205(e), and 10214.5(a) Unemployment Insurance Code.

Effective: August 19, 1991

Amended: April 14, 1995; December 4, 1997

4441.5 Training Schedule.

- (a) A training schedule acceptable to the Panel shall be in place at the start of training. The training schedule shall include both a detailed roll out schedule for at least the first six months of training by types of training and job groups, and a summary roll out schedule for the remainder of the term of the Agreement.
- (b) The training schedule must be maintained current and updated periodically, subject to review and approval of the monitoring analyst. The contractor shall notify the Panel of any significant changes in the training schedule prior to implementation of those changes.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Section 10205(c), Unemployment Insurance Code.

Effective: May 18, 1998

4442. Record Keeping.

(a) Contractors shall maintain and make available:

- (1) records that clearly document all aspects of training and retention related to the training program;
- (2) applicable financial records which document funds received and disbursed, and
- (3) payroll and personnel records related to the ETP training agreement.

(b) All classroom/laboratory training and videoconference training records shall be maintained by job number and shall contain the following elements:

- (1) Date(s) training occurred
- (2) Type of training and course title as identified in the approved curriculum
- (3) Number of hours trainee was in attendance per day of training - excluding meal breaks
- (4) Trainer(s) name(s) - typed or clearly printed
- (5) Trainer's signature - name signed once for each type of training
- (6) Trainee(s) name(s) - typed or clearly printed
- (7) Trainee's signatures - name signed on the first day of training for each type of training
- (8) Trainee's initials - on first day of training and each subsequent day of training for each type of training"

(c) All computer-based training records shall be maintained by job number and shall contain the following elements:

- (1) Date system was last accessed for a specific course
- (2) Type of training and course title - as identified in the approved curriculum
- (3) Number of hours designated to complete a course
- (4) Percentage of course completed
- (5) Trainee name - typed or clearly printed
- (6) Trainee's signature verifying course was completed
- (7) Signature of an authorized employer representative, verifying trainee competency attainment in the specified course at completion of the course.

(d) Contractors shall collect and maintain Structured-On-Site-Training (SOST) records by job number and type of training (as identified in the contract Training Plan) that contain the following elements:

- (1) Date(s) training was provided
- (2) Trainer's name - typed or clearly printed
- (3) Trainee's names - typed or clearly printed
- (4) Trainer's time - completed daily (in increments of not less than 5 minutes)
- (5) Type of training
- (6) Trainer's activities as provided in 22 CCR 4400(y)
- (7) Trainer's signature and date at completion of SOST by type of training

(e) For SOST, Contractor shall maintain a list of trainees who have achieved competency. This list must be organized by job number, include the type of training and date of competency attainment, and be signed and dated by the trainer(s) and supervisor(s).

(f) For purposes of items (b), (c) and (d) above, contractor developed documentation forms shall be provided to ETP for approval prior to implementation.

(g) All records identified in paragraphs (a) through (e) above shall be retained for no less than four years from the termination date of the agreement or three years after final payment under the agreement, whichever is later.

(1) If the agreement is partially or completely terminated, the records relating to the performance prior to termination shall be preserved and made available to ETP for a period of three (3) years from the date of any resulting final settlement.

(2) Records which relate to litigation or the settlement of claims arising out of the performance of the agreement, or reimbursable costs and expenses of the agreement as to which exception has been taken by ETP or any of its duly authorized representatives, shall be retained by contractor for a period of 3 years after the final dispositions of such appeals, audits, claims, exceptions, or litigation.

(h) All records will be retained within the control of the primary contractor and shall be made available for review at the contractor's place of business, within the State of California.

(i) At the completion of the agreement, all records identified in item (a)(1) above, whether of the contractor or subcontractor(s), and all records identified in (a)(2) and (a)(3) shall be retained by the primary contractor and be made available for review at the contractor's place of business within the State of California.

(j) All records shall be open to inspection and shall be subject to being copied by any ETP-authorized representative at any time during the normal business hours of the contractor.

(k) In the absence of records or supporting documentation necessary to substantiate performance under the contract, the contractor may be required to return ETP funds, plus interest.

Authority: §10205(l), Unemployment Insurance Code.

Reference: §10205(f), Unemployment Insurance Code.

Effective: April 12, 1991

Amended: July 19, 1996; December 4, 1997, December 20, 1999

4442.1 Make-up Training

(a) Limitations on Payment for Hours Completed

- (1) A trainee may have excused absences of up to a maximum of 20 percent of the classroom/laboratory training hours and still be considered as having completed classroom/laboratory training. However, all absences must be authorized by the contractor/employer in writing and be based on good cause in order for the trainee to be considered for payment. These documented, excused absences need not be made up to receive payment but make-up sessions are encouraged.
- (2) No reimbursement for a trainee is paid if a trainee receives less than 80 percent of class/lab training hours specified in the contract unless the contractor provides make-up training as provided herein.

(b) Contractors are permitted to provide make-up training sessions for trainees in order to meet the 80% minimum training hour requirement and/or any other minimum hour requirement provided by law or the Panel training contract. Make-up classroom/laboratory training sessions must meet the same requirements as the training provided for in the contract, and:

- (1) In order to qualify as "classroom/laboratory training hours"
 - (A) The make-up session must be conducted in the same manner as the scheduled classroom/laboratory in content/curriculum, method of delivery, and be provided by a qualified trainer;
 - (B) A video or audio tape of a training session by itself cannot constitute a make-up session;
 - (C) A video tape of the entire training session missed may be acceptable for classroom/laboratory only if a qualified trainer is in attendance during the video to answer questions and provide overall clarification and/or instruction as needed. The Panel may approve this method of make-up training on a case-by-case basis to ensure this option accomplishes the objective and intent of the training;
 - (D) Made up on an hour-per-hour basis for the training missed;
 - (E) Provided at or below the trainer-to-trainee ratios as stated in the contract for all training sessions;
 - (F) Documented in the same manner as regularly scheduled training. However, the contractor should indicate on the training attendance record when the training is "make-up" training;
 - (G) Made up before beginning the 90 day retention and/or any other applicable retention period.

(c) An individual trainee may make up training by attending another regularly scheduled classroom/laboratory session or a make up training session as described in (b) above.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Section 10200(a), Unemployment Insurance Code. Effective: December 4, 1997

4442.2 Record Keeping Modifications.

The Panel may modify the record keeping requirements of 22 CCR Sections 4442 and 4442.1 if necessitated by the contractor's current, established record keeping practices, provided that the modified record keeping practices will properly substantiate the delivery of training, placement and retention as required in the agreement, and the modified record keeping practices can be audited by the Panel. Any such record keeping modifications agreed to by ETP and Contractor shall be incorporated into the agreement.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Section 10205(f), Unemployment Insurance Code.

Effective : December 20, 1999

4443. Monitoring.

- (a) Panel staff shall schedule periodic on-site visits to the contractor's place of business or the location of the training program funded by the panel for the purpose of reviewing training activities for compliance with the specifications outlined in the agreement. During the visit, the monitor shall do any or all of the following:
 - (1) review the number of trainees entering, progressing through, or completing training and/or the retention period;
 - (2) for new hire training programs, determine if appropriate placement services are being provided to successful training completers as required by the contract;
 - (3) review the training schedule;
 - (4) review the curricula;
 - (5) observe classroom, laboratory, and/or structured, on-site training in session;
 - (6) assure that budgeted and required training staff, equipment, supplies and materials are available;
 - (7) interview trainers and trainees;
 - (8) review record keeping and daily documentation of training;
 - (9) review invoices;
 - (10) review subagreements and determine if all specified services are being delivered as provided for in the contract; and
 - (11) determine if the agreement and any subsequent amendments have been executed by the state.
- (b) The results of the visit shall be documented in a report covering all areas reviewed, and include an assessment whether the training is meeting the Agreement specifications. If the program is out of compliance, recommendations for adjustments shall be made. Corrective action must be effected by the contractor as specified in the report. A copy of the report shall be provided to the Contractor.

Authority: Section 10205(k), Unemployment Insurance Code

Reference: Section 10205(f) Unemployment Insurance Code

Effective: April 12, 1991

4444. Project Review.

Panel staff shall prepare a special review of contract performance every six months after the start of a contract. Such reviews shall include the following:

- (a) Contractor's actual enrollments compared with planned enrollments at that stage of the training.
- (b) Assessment of the likelihood that the full amount of the contract will be earned.
- (c) Recommendations to the panel for amendments to disencumber funds. In these cases, the panel shall notify the contractor of the panel's intention to disencumber funds, and the contractor shall have the opportunity to make a presentation before the panel prior to any final action by the panel.

Authority: Section 10205(k), Unemployment Insurance Code.

Reference: Section 10205(f) Unemployment Insurance Code

Effective: April 12, 1991

4445. Contract Performance and Amendments.

- (a) The Panel shall not approve proposals for substantive, retroactive contract amendments. No progress payments shall be made for services performed or delivered prior to the execution of the contract or any subsequent amendments.
- (b) Contractors requesting a concurrent new hire training or a concurrent retraining contract or an amendment adding funds to an existing contract, must demonstrate that funds previously encumbered have been or will be fully used.
- (c) The Panel shall consider a contractor's performance on any prior Panel agreement(s) when considering whether to approve a contractor's request for funding for either a new hire or retraining agreement. Performance criteria shall include, but not be limited to, the following:
 - (1) Percentage of encumbered funds earned by contractor;
 - (2) Percentage of trainees retained in employment;
 - (3) Percentage of trainees enrolled under contract;

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Section 10205(c), (e), 10206, 10209(a), (d), Unemployment Insurance Code.

Effective: April 12, 1991

Amended: July 19, 1996

4445.1 Termination Procedures

- (a) The termination of a contract can be initiated in writing by either the Panel or the contractor.
 - (1) A contractor terminating a training contract with the Panel should address the notice of termination to the Executive Director or as otherwise indicated in the contract. In response to a termination notice the Executive Director shall acknowledge the termination by letter to the contractor containing, if applicable, a statement of the contractor's monetary obligation to the Panel.
 - (2) Prior to initiating any termination, the Panel must determine if sufficient evidence exists that contract requirements have not been satisfactorily performed by the contractor and/or fraud or other egregious conduct by the contractor exists.
 - (A) As appropriate, Panel staff shall prepare a memorandum addressed to the Executive Director providing pertinent information and recommending the Director terminate the contract including the following:
 - 1. a brief description of the contract (i.e., the contractor, contract number, the amount, date approved, names of major subcontractors, type of training);
 - 2. a description of performance under the contract;
 - 3. a statement relating contract violation(s);
 - 4. a statement relating attempts to meet and confer with the contractor in the case of a lack of performance violation;
 - 5. a statement relating any unresolved or disputed issue(s) including the contractor's position;
 - 6. a statement of the current status of dollar amounts owed to or by the contractor;
 - 7. a statement relating the participation or nonparticipation of third-party contractors; and
 - 8. the reason for termination.

Based upon the information provided, the Executive Director will determine whether to terminate the agreement.

- (B) The Executive Director may terminate a contract without further cause after six months from the start date of the contract, where there has been no significant performance pursuant to the terms and conditions of the contract; that is, the contractor has failed to provide a training plan or conform to the training plan for at least 25% of the planned trainees as of the date of termination.
- (C) No notice time period is required for termination based upon a finding of fraud. In all other situations, the Panel must provide written notice of the termination at least 30 calendar days prior to the effective date of the termination of the contract.

Authority: Section 10205(l), Unemployment Insurance Code.

Reference: Section 10206(a), 10209(f), Unemployment Insurance Code.

Effective: December 4, 1997

4446. Disencumbering Unearned Funds.

The panel shall disencumber any unearned funds remaining in a contract no later than six months after the termination date of the contract. If the final billing is not resolved by that time due to delays in submission or processing or unresolved appeals, the panel staff shall be directed to estimate, based upon the contractor's billing to the panel, the maximum that could be earned by the contractor and shall disencumber all remaining funds no later than six months after the termination date of the contract.

Authority: Section 10205(k), Unemployment Insurance Code.

Reference: Section 10205(k), Unemployment Insurance Code.

Effective: April 12, 1991

4447. Unearned Advance Payments and Progress Payments.

All unearned advances and progress payments paid for trainees who are not trained, hired after the completion of training and retained in employment shall be returned to the panel no later than 75 days after the termination date of the contract. Interest calculated at the adjusted annual rate and by the method established pursuant to Section 19269, Revenue and Taxation Code shall be paid on all funds returned to the Panel under the provisions of this section from the first day of the month following the date they were received from the panel.

Authority: Section 10205(k), Unemployment Insurance Code.

Reference: Section 10205(k), Unemployment Insurance Code.

Effective: April 12, 1991

4448. Audits.

- (a) The panel shall, on an annual basis, provide for audits of a representative sample of training contracts. These audits shall determine whether certification of eligibility for training, enrollment in training, training, placement in a job, retention in that job at the specified wage and payments were made in accordance with the contract.
- (b) The panel shall provide for audits of training contract budgets, both for reasonable training and administrative costs.
- (c) The panel may provide for pre-award audits of training contracts to determine whether the contractor can perform the planned training.

Authority: Section 10205(k), Unemployment Insurance Code

Reference: Section 10205(g), 10212(e), Unemployment Insurance Code

Effective: April 12, 1991

4449. Collection Procedures.

- (a) Overpayment. Reconciliation and audit unit staff of the panel shall notify the contractor by demand letter that an overpayment exists, and such notification shall include the panel contractor billing. The demand letter shall be sent by certified mail, return receipt requested, and request payment in full within 30 days of date of mailing of the letter. If payment is not received within 30 days, a second notice of overpayment shall be sent to the contractor requesting payment in full within five days. If payment is not received within five days, panel staff shall prepare a final notice requesting payment within five days.
- (b) Nonpayment. If payment is not received within five days of the final notice and no appeal is filed to extend the appeal period, the matter shall be referred to the panel's general counsel for action.
- (c) Overdue accounts; installment payments.
 - (1) The panel may authorize liquidation of a debt by use of installment payments when necessary. Panel acceptance of an installment proposal shall be restricted to cases of unusual circumstances.
 - (2) Such proposals shall provide a payment schedule that will liquidate the liability at the earliest possible time. The debtor shall show the reason for an installment plan and its financial ability to remain solvent during the pay-back period. The panel may require an audited financial statement from the contractor.
 - (3) The panel may require a judgment and lien for each installment proposal approved by the panel.
 - (4) The panel may consider other methods of liquidating the account as approved by the appropriate state agency (i.e., the Attorney General).

Authority: Section 10205(k), Unemployment Insurance Code.

Reference: Section 10205(k), Unemployment Insurance Code.

Effective: April 12, 1991

4450. Appeal Process.

- (a) A Contractor may appeal any adverse staff decision made on behalf of the Panel within 30 days following receipt of written notice of the decision. All appeals must be filed in writing with the Executive Director and sent to the Panel's Sacramento Central Office.
- (1) A Contractor may appeal an adverse staff decision by notifying the Executive Director of its intent to appeal. The Notice of Intent to Appeal shall be in writing and submitted within 30 days following receipt of the written notice of staff's decision.
- (2) The formal appeal shall be submitted to the Executive Director within 30 days of filing the Notice of Intent to Appeal and shall include the following:
 - (A) A statement setting forth the facts at issue and all evidence supporting the appeal, and
 - (B) An original and two copies of all materials and evidence supporting the appeal. This documentation must be tabbed, numbered and indexed.
- (3) The Executive Director shall respond to the appeal in writing within 60 days of receipt of the Contractor's written appeal.
- (4) Contractor may appeal the Executive Director's decision. Such appeal shall be submitted to the Panel at the Sacramento Central Office address and be directed to the Panel Chairman within 10 days following receipt of the Executive Director's written decision.
- (5) Within 45 days following receipt of Contractor's appeal, the Panel shall take one of the following actions:
 - (A) Refuse to hear the matter, giving the appellant written reasons for the denial; or
 - (B) Conduct a hearing and affirm, modify or reverse the Executive Director's decision, or
 - (C) Delegate the authority to consider the appeal to a subcommittee, or
 - (D) Contract with another State agency to consider the appeal.
- (6) Following receipt of the Panel's written decision, Contractor may request judicial review of the Panel's decision in Superior Court. The request must be initiated within 60 days from the date of receipt by the Contractor of the Panel's decision. If the Contractor does not request such a review within the 60 day period, the decision of the Panel is then final and no further review is available to Contractor.

The time limits specified above may be adjusted or extended by the Panel Chairman for good cause.

Authority: Section 10205(k), Unemployment Insurance Code.

Reference: Sections 10205(k), 10207, Unemployment Insurance Code.

Effective: April 14, 1995

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